38 N. J. Eq. 318; *Jones v. Jenkins*, 34 Md. 1. As opposed to it, see: *Rennyson's Appeal* (Pa.), 39 Am. Rep. 777; *Myers v. Gemmel*, 10 Barb. 537; *Keating v. Springer* (Ills.), 34 N. E. Rep. 805; *Collier v. Pierce*, 7 Gray, 18 (66 Am. Dec. 453 and note); *Keats v. Hugo*, 115 Mass. 204 (15 Am. Rep. 80); *Doyle v. Lord*, 64 N. Y. 439 (21 Am. Rep. 629); *Mullen v. Strickler*, 19 Ohio St. 135 (2 Am. Rep. 379); *Powell v. Sims*, 5 W. Va. 1 (13 Am. Rep. 629); *Turner v. Thompson*, 58 Ga. 268 (24 Am. Rep. 497); *Morrison v. Marquardt*, 24 Iowa 35 (92 Am. Dec. 444 and note)—an excellent opinion by Dillon, Ch. J.; *Keiper v. Klein*, 51 Ind. 316.

SURFACE WATER.—Disputes between riparian proprietors as to their respective rights in *natural* water courses, are usually in connection with the pollution or diminution of the water. But in connection with *surface* water, there is rarely any controversy as to the right to enjoy it, or any complaint of its diminution. On the contrary, surface water is generally regarded as undesirable, so much so that the maxim of the common law is that "surface water is a common enemy." Questions under this head usually arise out of the complaint of the lower proprietor that the owner of upper estate has collected the surface water in artificial channels, and is discharging it upon the lower estate in increased volume, to the injury of the latter—or else the upper proprietor complains that the lower has, by building dikes or other obstructions for the protection of his own property, thrown back the surface water on the upper estate to its injury.

The authorities are in hopeless conflict as to the respective rights of the upper and lower proprietors in these particulars. One line of cases holds that surface water is a common enemy, and that any proprietor may get rid of it as best he may, and may protect his own property against it, even though in so doing it be thrown back on the upper estate. This is usually designated as the "common law rule." Another line holds that the lower estate is burdened with a servitude in favor of the upper for the flow of surface water, from natural causes, flowing in a natural manner. This is known as the "civil law rule."

It seems to be agreed, however, that the upper proprietor cannot collect the surface water in artificial channels or ditches, and cast it upon the lower estate in concentrated volume; and that, on the other hand, the lower proprietor cannot obstruct a natural channel along which the surface water has been accustomed to flow from the land above. And even in those States where the civil law rule prevails, it is generally held not to apply to lots in cities, towns and villages, where the lower proprietor interrupts the flow of surface water by the erection of buildings or other improvements on his property.

In modern times this subject has assumed especial importance in connection with the building of railroads, whose embankments interfere with the flow of surface water from adjoining farms.

The subject will be found discussed at large in the following authorities: Wood on Nuisances, 377-399; Gould on Waters, 273; 2 Dillon Munic. Corp., 1038 *et seq.*; Angell on Water Courses, 108a, 108b; Washburn on Easements (3d Ed.), 353 (3a); *O'Connor v. F. A. & P. R. R. Co.* (Wis.), 5 Am. & Eng. R. R. Cas. 83 and note (s. c. 38 Am. Rep. 753 and note); *Franklin v. Fisk* (Mass.), 90 Am. Dec. 194; *Rowe v. R. R. Co.* (Minn.), 16 Am. St. Rep. 706; *Johnson v. R. R. Co.* (Wis.), 27 Id. 76; *Gray v. McWilliams* (Cal.), 35 Id. 163 and note; *Edwards v. Charlotte*

etc. R. Co. (S. C.), 18 S. E. Rep. 58; *Rychlicki v. St. Louis* (Mo.), 14 Am. St. Rep. 651 and note; Notes 30 Am. St. Rep. 391.

In Virginia the common law rule was adopted, *obiter*, in the recent case of *N. & W. R. Co. v. Carter*, 22 S. E. Rep. 517 (1895).

It is generally held that municipal corporations, in the graduation of streets, are governed by the principle that surface water is a common enemy—and hence that such corporations are not liable for throwing the surface water back on abutting lots, if necessary in grading: 2 Dillon Munic. Corp. (4th ed.), 1039–1043. In some of the states this right is qualified by the requirement that if practicable to provide for the escape of surface water by drains through or under the street, it is the duty of the city to provide such drains. And this is the doctrine in Virginia: 2 Dillon Munic. Corp. 1043 and n.; *Smith v. Alexandria*, 33 Gratt. 208 (36 Am. Rep. 788). The authorities are collected in note to *Goddard v. Inhabitants* (Me), 30 Am. St. Rep. 390–395.

LOST PROPERTY.—In determining the question of title to property found, an important distinction is to be noted between chattels *lost* and those merely *mislaid*. In either case they belong to the owner, if he can be ascertained, but nice questions of priority of claim arise between third persons.

(1) *Mislaid property.* Property is not legally lost when the owner has intentionally placed it where it is afterwards found, but has forgotten it. As, for example, where one lays his purse on the counter in a store or bank, and leaves it through forgetfulness. In cases of this sort, where the owner cannot be found, the property belongs rather to the *proprietor of the premises* where found, than to him who finds it. *Lawrence v. State*, 1 Humph. (Tenn.) 228 (34 Am. Dec. 644 and n.); *People v. McGarren*, 17 Wend. 460; *Kincaid v. Eaton*, 98 Mass. 139 (93 Am. Dec. 142); *McAvoy v. Medina*, 11 Allen, 548 (87 Am. Dec. 733 and note); 5 Green Bag, 201.

(2) *Lost property.* Where the chattel has not been merely mislaid, but has been dropped by the owner unintentionally, it belongs to the *finder* as against everybody but the true owner, regardless of the place where found. For example, a purse found on the *floor* of a bank or store by a customer, belongs to the finder rather than to the proprietor of the premises. *Tancil v. Seaton*, 28 Gratt. 603 (26 Am. Rep. 380); *Lawrence v. Buck*, 62 Me. 275; *Durfee v. Jones*, 11 R. I. 588 (23 Am. Rep. 528); *N. Y. & H. R. R. Co. v. Haws*, 53 N. Y. 175; *Bowen v. Sullivan*, 62 Ind. 288 (30 Am. Rep. 172); *Hamaker v. Blanchard*, 90 Pa. St. 379 (35 Am. Rep. 664); *Bridges v. Hawkesworth*, 7 Eng. L. & Eq. 724; *Livermore v. White*, 74 Me. 452 (43 Am. Rep. 600); 35 Cent. L. J. 365.

In *Merry v. Green*, 7 Mees. & W. 623, it was held that a purse found in a secret drawer of a bureau by one who had purchased it at public auction, belonged to the *seller* and not to the buyer, though the seller did not know of its existence; it being considered that it belonged rather in the category of *forgotten* than of *lost* property.

(3) *Rights of finder to reward, expenses, etc.* (a) Where there is no reward promised: In such case the law does not imply a promise to pay a reward, but regards the finder as acting from motives of kindness and a sense of moral duty. In this respect the salvage of property on land differs from salvage at sea. *Amory v. Flynn*, 10 Johns. 101 (6 Am. Dec. 316); *Deslondes v. Wilson*, 5 La. 397 (25 Am.